

DETAILED ACTION

Information Disclosure Statement

1. The information disclosure statement (IDS) submitted on December 21, 2009 was filed after the mailing date of the Office Action on September 29, 2009. The submission is in compliance with the provisions of 37 CFR 1.97. Accordingly, the information disclosure statement is being considered by the examiner.

Response to Arguments

2. Applicant's amendments, see pages 3 and 4 in remarks filed December 21, 2009 with respect to the objection of the drawings and the claims, have been fully considered, and the objections have been withdrawn.

3. Applicant's amendments, see page 2 in the remarks, with respect to the objection of the specification, have been fully considered, and the objection has been withdrawn.

4. In light of Applicant's cancellation of claim 3, see page 3 in the remarks, with respect to the rejection of claim 3 under 35 USC 112, 1st paragraph, the rejection has been withdrawn.

5. Applicant's amendments, see pages 3 and 4 in the remarks, with respect to the rejections of claims 1 through 7 under 35 USC 112, 2nd paragraph, have been fully considered, and the rejections have been withdrawn.

6. Applicant's arguments, with respect to the rejections of claims 1 through 7 in view of Eder, have been fully considered but they are not persuasive.

Applicant argues that Eder does not teach certain features in a tubular label positioning device. However, Eder teaches:

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- a drum (7), beneath where a tubular label (2) is formed on the bottle (1) and adapted to support the bottle on an upper base, where the drum allowing some vertical translation, with assistance from vertically reciprocable bells (10), in order to take the bottle inside the tubular label (column 3, lines 18-63; Figure 3),
- the drum provides lugs (i.e. stopper members) (27) placed in a semi-circle at a height from the bottle bottom on the upper base of the drum, when the bottle is housed on the drum (Figures 1 and 4), the semi-circle diameter having allowing precise fitting of the bottle.

Eder further teaches when it is desired to change over from different label lengths, the adaptation can be made easily because the rotary plates (8) that support the containers for rotation have lugs that mate with a carrier plate that has recesses to effect interlocking. This makes it possible to exchange rotary plates and obtain automatic coupling to the correct drive. Gear teeth may be formed integrally with the rotary plates or ring gears having an inside diameter, that is complementary to the diameter of the plates and has a different pitch diameter to avoid the need for exchanging the entire plates to accommodate different sized bottles (column 2, lines 27-34; column 4, lines 40-58; column 7, lines 28-35).

Thus, the rejections are maintained in view of Eder.

Claim Rejections - 35 USC § 112

7. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

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8. Claims 1, 2, 4, 5, 6, and 7 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 1 teaches “a drum around which the tubular label is formed” (in lines 2 and 3) and “a tubular label winding drum” (in line 7). It is unclear, by the way the claim is written, as to whether these two elements refer to the same feature or are different elements.

Claim Rejections - 35 USC § 102

9. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

10. Claims 1, 2, 6, and 7 are rejected under 35 U.S.C. 102(b) as being unpatentable by Eder (US 4,594,123).

With respect to claims 1 and 2, Eder teaches a device for positioning a tubular label at a pre-established height from a bottle bottom in a rotating labeling machine of a type equipped with:

- a drum (7), beneath where a tubular label (2) is formed on the bottle (1) and adapted to support the bottle on an upper base, where the drum allowing some vertical translation, with assistance from vertically reciprocable bells (10), in order to take the bottle inside the tubular label (column 3, lines 18-63; Figure 3),

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- the drum provides lugs (i.e. stopper members) (27) placed in a semi-circle at a height from the bottle bottom on the upper base of the drum, when the bottle is housed on the drum (Figures 1 and 4), the semi-circle diameter having allowing precise fitting of the bottle.

With respect to claim 6, Eder teaches providing projecting lugs (i.e. stopper members) (27), which inherently comprise vertically-oriented walls, arranged as a semi-circle on a collar (9) adapted to be secured to the upper base of the winding drum (9).

With respect to claim 7, Eder teaches providing vertical pins (27) and screws that support a semi-circle bracket (34) on which gears (i.e. limit switches) (33) are radially secured, said vertical pins being able to be fixed to the upper base of the winding drum or to a bracket equipped with rotation and vertical movements (column 5, lines 22-44; column 7, lines 29-35).

Claim Rejections - 35 USC § 103

11. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

12. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.

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4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

13. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

14. Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eder ('123) as applied to claim 1 above, and further in view of Eder (US 5,464,495).

The teachings of claim 1 are as described above.

Eder ('123) does not teach supplying hot air jets from when it is labeled to a conveyor during heat-shrinking (Applicant's specification: page 3, line 23 – page 4, line 2). However, it would have been obvious for one having ordinary skill in the art to do so to assist in adhering a label, as Eder ('495) teaches supplying hot air through nozzles (67, 68, 69) during heat shrinking labels to bottles (1) while rotating on a star turntable (61) (column 12, line 41 – column 13, line 9; Figures 13-15).

15. Claim 5 is rejected under 35 U.S.C. 103(a) as being unpatentable over Eder ('123) in view of Eder (US '495), as applied to claim 4 above, and further in view of Dullinger (US 3,784,438).

The teachings of claim 1 are as described above.

Eder ('123) does not retaining bottles in position on a star conveyor with elastic members. However, it would have been obvious for one having ordinary skill in the art to do so, as Dullinger teaches providing rubber padding to allow conformance and engagement of the bottles in the conveyor (abstract; column 1, lines 55-57; column 3, lines 32-35).

Conclusion

16. Applicant's amendment necessitated the new ground of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to **SONYA MAZUMDAR** whose telephone number is (571)272-6019. The examiner can normally be reached on 9:00 AM - 5:30 PM.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Philip Tucker can be reached on (571) 272-1095. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

SM

/Philip C Tucker/
Supervisory Patent Examiner, Art Unit 1791